

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA HAMEL)	
Claimant)	
VS.)	
)	Docket No. 219,836
ROADWAY EXPRESS, INC.)	
Respondent)	
AND)	
)	
ROADWAY EXPRESS, INC. & LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Claimant appeals from an Award rendered by Administrative Law Judge Steven J. Howard on April 20, 1998. The Appeals Board heard oral argument September 23, 1998.

APPEARANCES

Davy C. Walker of Kansas City, Kansas, appeared on behalf of claimant. Wade A. Dorothy of Lenexa, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The single issue on appeal is the nature and extent of claimant's disability. Claimant disputes the findings by the Administrative Law Judge on both the wage loss and task loss factors for the work disability calculation. The Application for Review also lists as an issue a period of claimed temporary total disability but claimant advised at oral argument that this issue is abandoned.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments by the parties, the Appeals Board concludes the Award by the Administrative Law Judge should be affirmed.

Findings of Fact

1. Claimant, a dock worker, injured her neck on April 1, 1996, while pulling a dock plate into a trailer.
2. After initial treatment by Dr. Inzerillo and Dr. Robert T. Tenny, respondent referred claimant to Dr. Steven L. Reintjes. Dr. Reintjes did double-fusion surgery at C5-C6 and C6-C7. Dr. Reintjes released claimant with restrictions on October 18, 1996.
3. Because of the injury, claimant was unable to return to her work for respondent.
4. The Board agrees with and affirms the finding by the ALJ that claimant has not made a good faith effort to find employment since her release. Between the date of her release by Dr. Reintjes, October 18, 1996, and the regular hearing on January 6, 1998, claimant applied for work with respondent and at Manion Militaria Auction House. She also applied at a veterinarian's office, a greenhouse, and a feed store. She applied for a position cleaning rental properties and looked through newspaper ads. It appears she applied at a few other places but did not, in our view, make a good faith effort.
5. Although Dr. Ernest H. Neighbor provided testimony that might support finding a higher task loss, the Board agrees with and adopts the task loss opinion by Dr. Lowery Jones, Jr. Dr. Jones did an independent medical evaluation by order of the ALJ. Dr. Jones reviewed a list of the tasks claimant had done in work during the previous 15 years. He testified claimant cannot do two of the seven, or 29 percent, of those tasks.
6. Based on the opinion of Mr. Michael J. Dreiling, the Board finds claimant cannot now earn the wage she was earning at the time of the injury and the difference between what she was earning at the time of the injury and what she is now able to earn is 62 percent.

Conclusions of Law

1. Because of her injury, claimant does not now earn a wage that is 90 percent or more of her pre-injury wage. Claimant is entitled to a work disability. K.S.A. 44-510e defines work disability as the average of the wage loss and task loss:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between

the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.

2. If a claimant makes a good faith effort to find other employment, the wage factor used in the work disability calculation is based on the actual difference between the pre- and post-injury wages. If claimant has not made a good faith effort to find employment, a post-injury wage, based on claimant's ability, should be imputed based on all relevant facts, including expert testimony. Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

3. Here, the Board finds claimant did not make a good faith effort to find employment and, based on expert testimony by Mr. Dreiling, concludes claimant can now earn only 38 percent of her pre-injury wage for a loss of 62 percent. The 62 percent is therefore used as the wage factor in calculating work disability.

4. The wage loss and task loss are averaged to determine the work disability. Claimant has a work disability of 45.5 percent based on a 62 percent wage loss and a 29 percent task loss. K.S.A. 44-510e.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Steven J. Howard on April 20, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Davy C. Walker, Kansas City, KS
Wade A. Dorothy, Lenexa, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director